IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1364 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

THAKORE KESAHI VISAJI

Appearance:

1. Criminal Appeal No. 1364 of 1986
MR KC SHAH ADDL PP for Appellant No. 1
MR ADIL MEHTA for Respondent No. 1-6
NOTICE SERVED for Respondent No. 1-6

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 25/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. In view of our order dated 12th March, 2004, considering the request of Mr. Adil Mehta, learned advocate appearing for the respondents accused in an acquittal appeal filed by the State and as indicated in our order that he wants to keep his clients present with the complainant, as according to his information that after the order of acquittal recorded and respondent accused Kesaji Visaji Thakore released from the jail, due to intervention of wisely people of the village, the dispute between them was settled and now, they are residing in the same village with cordial relation as one family members, we have kept the matter on 22nd March, 2004 and on that day, except the respondent No. 4 Thakore Vihaji Mansangaji, all the respondents accused had remained present with complainant Shri Lalaji Aarjanji Thakore and on that day, Mr. Mehta, has tendered the affidavit filed by Shri Kesaji Visaji Thakore respondent No. 1 herein dated 22nd March, 2004 and copy of the same was duly furnished to Shri K.C. Shah, learned Addl. P.P.

2. As the Court was busy in another part heard matter namely the Confirmation Case being Confirmation Case No. 2 of 2003, this appeal was kept pending and considering the request of Mr. Mehta and also on ascertaining from complainant Shri Lalaji Aarjanbhai, who in term, had also concur with the affidavit filed by accused Kesaji Visaji Thakore and he has also confirmed that now there was a compromised between them, since the accused Kesaji was released on bail in the year 1997 and now the relation between them is very cordial in view of the intervention of the wisely village people and the accused as well as complainant side had acted upon the compromised arrived at between them since long. The complainant Lalaji had also requested us for time to put this fact, for which, he will file affidavit.

3. Mr. Adit Mehta, learned advocate has also tendered the affidavit of complainant Shri Lalaji Aarjanbhai Thakore dated 22.3.2004. The copy of which is duly furnished to Mr. K.C. Shah, learned Addl. P.P. Mr. K.C. Shah, learned Addl. P.P. has also produced the letter issued by P.I., Kadi Police Station dated 22nd March, 2004 addressed to Mr. K.C. Shah with the statement of complainant Lalaji Aarjanbhai Thakore recorded by the police on 19th March, 2004 as well as the statement of Kesaji Visaji Thakore - respondent No. 1

herein and on going through the said letter with the statements, it confirmed, what is reflected in the affidavit filed by Kesaji Visaji Thakore - respondent No. 1 as well as the complainant Shri Lalaji Aarjanji Thakore.

4. In light of the above facts, we have to examine the acquittal appeal filed by the State acquitting the respondents accused while disposing of Sessions Case No. 130 of 1985 on 1.10.1986. It is the prosecution case that respondents accused has formed an unlawful assembly on 24th July, 1985 at village Charol at about 6-00 AM and each accused were member of unlawful assembly and has committed serious offence and committed murder of Dhanaji Chelaji - father of complainant Lalaji and assaulted complainant Lalaji and thereby, they were responsible for the offences punishable under Sections 143, 147, 148, 302, 326, 324, 325, 323 read with Section 149 of the IPC.

5. As found from the record and from the evidence, on the very day i.e. on 24th July, 1985, a complaint was filed by Kesaji Visaji Thakore present respondent No. 1 at the time, when the police officer has visited the scene of offence at village Charol, in respect of the complaint filed by Shri Lalaji against the respondents accused in respect of the murder committed by accused persons of Dhanaji Chelaji and assault on complainant, where the accused Kesaji has filed complaint before the police against accused persons for committing murder of his daughter Chandrika and as transpires from the record, on the complaint of Kesaji, after investigation of the said complaint, a chargesheet was filed against accused Kesaji - respondent No. 1 herein and his son for the murder of Chandrika and respondent No. 1 and his son was placed for trial in a separate trial before the learned trial Judge for the offence under Section 302 of the IPC for murder of Chandrika.

6. In the present appeal, the learned trial Judge has acquitted the accused from the offence of murder, however, according to learned trial Judge, the accused were responsible for their individual acts and convicted the accused. The learned trial Judge has on considering the evidence led before him, recorded finding that the accused Nos. 1 to 4 has committed offence under Sections 325, 324, 323 read with Section 114 of the IPC and ordered to sentence undergone, which they have already undergone and also passed order regarding fine of Rs.600=00 each and in default of fine, 3 months RI each. The learned trial Judge has also ordered that if the fine amount of Rs.2400=00 is paid by the accused, the said

amount is ordered to be paid Baluben, widow of deceased Dhanaji by way of compensation. The respondents accused No. 1 and 2 were convicted for the offence under Section 324, while accused No. 4 was convicted for the offence under Section 325 and accused No. 3 was convicted for the offence under Section 323 of the IPC. However, the learned trial Judge has not passed any separate sentence on the accused. Accused Kesaji Visaji Thakore was found responsible for the murder of his daughter Chandrika and in a separate trial against the accused, in Sessions Case No. 131 of 1985, in respect of the offence murdered at Kadi Police Station being I. CR. No. 276 of 1985, the learned trial Judge has convicted the respondent No. 1 Kesaji Visaji for the offence under Section 302 of the IPC and was ordered to suffer RI for life and the sentence imposed on the accused be ordered to run concurrently, in view of the conviction of the accused for the offence under Section 302 of the IPC in Sessions Case No. 131 of 1985.

7. During hearing, we have inquired with the Registry in respect of the order of conviction recorded by the learned trial Judge in respect of conviction of the accused persons for the offence under Section 302 of the IPC for murder of Chandrika and ascertained that whether any appeal is filed by the said accused challenging the order of conviction and sentence recorded by the learned trial Judge. During hearing, it is brought to our notice that so far as conviction of the accused Kesaji and his son, was challenged by them by preferring a Criminal Appeal and High Court has on considering the judgement of conviction and sentence recorded by the learned trial Judge, acquitted him for the murder of Chandrika and has allowed the appeal of the accused and set aside the order of conviction and sentence recorded by the learned trial Judge. Mr. Mehta, learned advocate has vehemently urged that this being an acquittal appeal, and in light of the guidelines of the Apex Court, this court is not required to interfere in the order under challenge passed by the learned trial Judge acquitting the accused and according to him, that the learned trial Judge has on appreciating the evidence, has found that the accused were not responsible for the murder of Dhanaji Chelaji and so far as trial Court has accepted the evidence and found that the accused were guilty for which, learned trial Judge has passed order of sentence and also awarded fine, which the accused persons have deposited immediately on the date of recording the the order passed by the learned trial Judge. According to him that even as found from the affidavit, which he has tendered, it also suggests

that there is no dispute between them and there is no grievance remained between them and therefore, this Court will not interfere with the order of acquittal in respect of the incident, which has taken place as back as on 24th July, 1985 and has prayed that the appeal filed by the State be dismissed and confirmed the order passed by the learned trial Judge.

8. In light of the contentions raised by Mr. Shah and Mr. Mehta, it is true that learned trial Judge has on appreciating the evidence has found that the accused persons were not responsible for murder of Dhanaji Chelaji and further that trial Court has on the same evidence, has found that accused have committed offences under Sections 325, 324, 323 read with Section 114 of the IPC and while imposing sentence, the Court has imposed sentenced as that of sentence under gone and the accused were ordered to pay fine of Rs.600/- each, for which, if the fine amount is received, the said amount is ordered to be paid to Baluben, widow of deceased Dhanaji Chelaji by way of compensation and the said amount is already deposited in the trail Court on the very day, when the learned trail Judge has disposed off the Sessions Case.

9. In our view, in light of the decision of the Apex Court and guidelines given by the Apex Court, this is not a case in which, it will be possible for us to interfere with the order of acquittal recorded by the learned trial Judge and further that even the conviction of the accused Kesaji Visaji Thakore and his son for the murder of his daughter Chandrika is also set aside by the High Court in the appeal filed by the accused. In our view, there is no merit in the appeal filed by the State and more particularly, both the parties have settled their disputes and now there is no grievance between them and further that this appeal is notified for final hearing after 18 years.

10. As found that amount of Rs.2400=00 is already deposited by the accused long back, we had directed the Registry to inquire that amount of fine is paid to Baluben by way of compensation or not? On inquiry by the Registry, it is found that amount of fine is deposited by the accused and the trial Court has deposited the said amount with the Bank and till date the amount is not paid to Baluben. This is really a sorry state of affairs. It is the duty of the trial Court to pay the compensation to Baluben immediately after the said amount is deposited by the accused. As the amount deposited is not fetching any interest, surely, Baluben is looser of interest for a such long period.

11. In light of above position, the present appeal is dismissed. The judgement and order recorded by the Additional Sessions Judge, Mehsana while disposing of Sessions Case No. 130 of 1985 on 1.10.1986 is hereby confirmed.

While convicting the respondents accused Nos. 1 to 4 for the offences under Sections 325, 324, 323 read with Section 114 of the IPC, the learned trial Judge has awarded sentence as that of sentence undergone and to pay a fine of Rs.600/- each, in default, RI for 3 months and also ordered that, if the amount of fine of Rs.2400=00 is paid by the said accused persons, the amount of Rs.2400=00 is to be given to Baluben, widow of deceased Dhanaji, by way of compensation. As found from the record that said accused had already deposited the fine amount before the trial Court, as reflected in the order itself. However, till today, the said amount is not given to Baluben and the trial Court has deposited the said amount with the Bank in an account, in which, interest is not received. Baluben is entitled for said amount in the year 1986. Accordingly, the trial Court is directed to see that the amount be paid to Baluben as early as possible after due verification. Mr. Mehta, learned advocate appearing for the respondents accused, has on getting instructions from respondents accused, on his own shown willingness that in addition to Rs.2400=00, a lump sum amount of Rs.10,000=00 will be paid to Baluben, widow of Dhanaji, to compensate her in respect of loss of interest for all these years and he has further stated that this amount will be paid to Baluben immediately alongwith the payment of Rs.2400=00 to be made to Baluben, as directed by this court. Bailable warrants issued against each respondent accused shall stand cancelled.

Rest of the order passed by the learned trial Judge regarding muddamal is hereby confirmed.

(D.K. Trivedi, J.)

(Akil Kureshi, J.)
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